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Studying the Past in Present Tense: International Law in the Benin Empire

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ABSTRACT

Africa's international legal history remains an understudied and grossly neglected aspect of international law within and outside the continent. Both the pedagogic and practical processes of international law present Eurocentric perspectives as the universal standard, thereby excluding the contributions of other non-European civilisations to internationality. This article looks at the practise of internationality in the Benin Empire. Both oral history and accounts of European explorers not only point to the sophistication of the organisational structure of the Kingdom but also indicated some important elements of its interactions with external parties. The consideration of the Benin Empire is predicated on two points. One is to provide the specific aspects of the Empire's international law/relations engagements. The second seeks to use the Benin Empire as an entrée analytical lens to illuminate the imperative of further research on Africa's international legal history and, therefore, stimulate the decolonisation of the understanding of this discipline.

The past resembles the future more than one drop of water resembles another. (Ibn Khaldun)

Introduction

As Zollmann (2018, 897) remarked, Africa's international legal history is a subject which 'has barely reached the sophistication of topics as have, for instance, African social and economic history'. This assertion has two analytical facets. One is the Eurocentric logic that has dominated the historical discourse of international law, particularly the extent to which it has subdued any reference to the contributions of non-European civilisations. Many of the prescribed textbooks in the field are aligned to this position (Fagbayibo 2019, 181). This reality helps to sharpen both the theoretical and practical applications of international law as a tool for affirming and entrenching Eurocentric hegemony.[1] The second point speaks to a methodological challenge: one that begs the twin questions of how to study the contributions of other civilisations, and the applicative exercise of such knowledge. As Ginther (1983, 224) rightly affirmed, the inclusion of 'African cases and materials, especially when placed within their specific socio-political and cultural milieu … enables us to regain a new "wholeness" in the approach to international law'. In order to regain 'a new wholeness', an important question to ask is how should we discuss/study the past in present tense? This question remains an imperative yet grossly understudied aspect of Africa's international legal history.

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It is the above concern that is at the heart of this article. The consideration of the internationality of the Benin Empire is a crucial element of this exercise. The Benin Empire, in present day Nigeria, was one of the most formidable pre-colonial African Kingdoms. Both oral history and accounts of European explorers not only point to the sophistication of the organisational structure of the Kingdom but also indicated some important elements of its interactions with African and external parties (Ryder 1969, ix). The most commonly referenced aspect of its engagement with European partners was the embassy of two envoys sent by the Oba of Benin to Lisbon, Portugal in 1514 to negotiate for arms (Ryder 1969, 45–46). These interactions also encompassed elements of commerce and missionary zeal (Ryder 1969, 29).

The aim of this article is two-fold. One is to provide the specific aspects of the Empire's international law/relations engagements. The second seeks to use the Benin Empire as an entrée analytical lens to illuminate the imperative of further research on Africa's international legal history and, therefore, stimulate the decolonisation of the understanding of this discipline.

Situating Africa's international legal history

Before discussing the practise of international law in the Benin Empire, it is imperative to first engage in a contextual discourse of international legal history. Such discourse stems from what Painter (2017, 10) referred to as 'the central methodological question … of the appropriate context for the study of international law and its histories […]'. The question is whether international law should continue to be narrated within a Eurocentric framework or situated within a proper historical context that takes into account the contributions of multiple civilisations to its development (Painter 2017, 10; Lorca 2012, 1039). The latter point faults the designation of a Eurocentric historical approach as the universal standard of conceptualising and practising international law.

In terms of the Eurocentric conception of international law, Ginther (1982, 52) noted that there are two levels of analysis: normative and sociological. The normative analysis denotes the basic legal principles which assumes to be the central organising logic of the application of inter-state relations. In this respect, Eurocentrism prescribes a 'Christian natural-law thinking' logic as the singular source of applying international law (Ginther 1982, 52). The understanding was that non-Christians were uncivilised and as such could not possibly make any meaningful, rational contribution to international law and civilizational ideas (Ginther 1982, 54). The sociological foundation refers to the social process that informed the constitutional organisation and politico-economic development of European states, and how such shaped the outlook and pattern of the normative understanding of international law (Ginther 1982, 52). This sociological prism to a large extent underlined the elevation of European law and thought process to a universal conception of international law (Ginther 1982, 53).

Similarly, Bedjaoui (1979) argued that there are four rules that underlined classic international law. The first is what he referred to as the 'geographical basis', one that places Europe and its laws at the normative heart of international law (Bedjaoui 1979, 50). The second is a 'religious-ethical inspiration', which stipulated Christian law as the foundational source of international law thoughts and processes (Bedjaoui 1979, 50). Thirdly is the 'economic motivation', which elevated capitalism as the organising economic

principle of international law (Bedjaoui 1979, 50). And lastly is the 'political aims' of international law as an imperialist instrument for subjugating and exploiting 'non-civilised' peoples (Bedjaoui 1979, 50).

From the 1950s, scholars from Africa and Asia started engaging in critical activities aimed at presenting a multi-civilizational perspective of international law. In the African context, the late Nigerian jurist, Taslim Olawale Elias, was a pioneer in this respect. His research provided examples of international intercourse between precolonial African Kingdoms and Europeans and Asians, and African entities *inter se* (Elias 1972, 3–33). Gathii (2012a, 407–409) noted that Elias belongs to the 'contributionist' school of thought, as his works aimed at disputing Eurocentric appropriation of universality by showing specific contributions of pre-colonial African Kingdoms to the systems and thoughts of internationality. Elias (1972, 3–15) discussed aspects of internationality in Africa from the sixth century to the exploits of African states and Kingdoms in the 1500s. Through this engagement, Elias emphasised two crucial points. One was to provide a functional equivalent historical analysis of international law:

> Many of the African States have had the same kind of experience in international relations as have the Nation States of Europe since the break-up of Western Christendom in 1648 as a result of the Treaty of Westphalia … in large parts of Africa, there had emerged broadly similar political and economic conditions and, therefore, similar rules of customary law, which makes it possible to speak of the existence of a universal body of principles of African customary law that is not essentially dissimilar to the broad principles of European law. (Elias 1965, 220)

Levitt (2015) made a similar argument regarding the relationship between the practises in ancient Egypt and modern international law. He adopted two analytical frames in not only showing functional equivalence but proving that ancient Egypt is indeed the origin of international law. The first relates to state formation, where ancient Egypt is regarded as the world's first nation-state and superpower (Levitt 2015, 129). In this respect, the idea of statehood (which encompasses a centralised political authority, a codified legal system, and the delegation of politico-juridical functions) and the normative and methodical approaches to inter-state relations (which includes the rights and obligations of states, management of complex inter/intra state trade systems, a professional military force, and defined boundaries) are attributed to the sophistication of Egypt's early rulers (Levitt 2015, 130–141). The second locates the origins of international customs and treaties within ancient Egypt. The Kemetic philosophy of MA'AT in ancient Egypt is identified as the philosophical basis of practises such as the humane treatment and protection of immigrants, diplomats and merchants (Levitt 2015, 148). Ancient Egypt later codified the principles of MA'AT in the Armana Letters and other treaty documents that expressed physical protection and fair treatment of foreign nationals and diplomats, extradition of fugitives, resolution of conflicts, and trade negotiations (Levitt 2015, 148–158).

However, some scholars have noted that the functional equivalence approach should not merely be about understanding the rules governing inter-state interactions but the extent to which such practises contributed to promoting peaceful inter-state relations (Lorca 2012, 1045). As Pella Jr. (2015, 114) remarked, even though patterns of inter-state relations in pre-colonial Africa differed from the European system, predictable

relations were assured through common practises of trade, war and shared norms. He argued that the knowledge of this pattern could help provide 'an alternative way in which international order was achieved and maintained' (Pella Jr. 2015, 114). As will be shown below, the Benin Empire was an important contributor and participant in international law, exhibiting some predictable behaviour and asserting itself as a principal and equal international player.

The second, which builds on the first one, is the placement of African customary law at the heart of understanding practises of internationality in pre-colonial Africa (Elias 1965, 219–220). As Elias (1965, 221) noted, proverbs in many African languages pointed to the extent to which customary law principles regulated external relations and conducts in pre-colonial Africa. Smith (1973) provided several examples regarding the linkage between customary law and the practise of international law in pre-colonial Africa. These include the physical appearance (and fortification through traditional medicine) of appointed diplomats; the accordance of immunity to representatives, which stems from African hospitality and respect; and ensuring the sanctity of treaties through the swearing of oaths or killing of animals and/or slaves (Smith 1973, 604–605, 611; Alexandrowicz 1973, 51; Levitt 2015, 145–148). Elias' reference to proverbs, or what Falola (2017, 703) described as 'ritual archives', points to the fact that much of Africa's international legal history is unrecorded and resides in oral history. The written account of these practises is mainly from European explorers and traders, and Islamic jurists (Smith 1973, 612; Zollmann 2018, 906). Writing on the diplomatic history of the Benin Empire, Ryder (1969, ix) observed that four sources of evidence are important for the proper understanding of its internationality:

> [D]ocumentary material, which is entirely European in origin; oral tradition, or the accounts of the past handed down to the present by word of mouth through successive generations; the society as it is; the material remains of the past, including the thousands of brass and ivory works for which Benin is famous.

In situating this historical discourse, a few issues have been raised. One is the importance of not romanticising or exaggerating the extent of these practises in pre-colonial Africa (Zollmann 2018, 901). Mazrui (1995, 35) had described this as *romantic gloriana,* an idea that pays 'tribute to Africa's empires and kingdoms, Africa's inventors and discoverers, great Shaka Zulu rather than the unknown peasants'. The imperative of ensuring accuracy further leads to another fundamental point: the scant consideration of African international legal history by legal scholars on the continent. Unlike general African history, law faculties in African universities have paid no serious attention to research on Africa's international legal history or incorporating available research into the curriculum. Zollmann (2018, 902) for example argued that such neglect stems from the fixation of African international law scholars on issues that rather 'hold relevance for the present'. Also, Fagbayibo (2019, 182–184) highlighted the four reasons behind such neglect: the colonial heritage of education, the conservative posture of African law schools towards engaging in multidisciplinary pedagogy, the affirmation of the neo-liberal global order, and the chronic underfunding of research and development programmes in African universities. Related to this is the methodology of incorporating African international legal history into the curriculum. The question is whether such incorporation should be based on the existent Eurocentric curriculum structure of international law[2] or whether

to rethink the entire structure in order to teach Africa's international legal history within the context of a truly decolonised, Afrocentric pedagogical approach.

Lastly, is the role of African scholars from the Third World Approaches to International Law (TWAIL) movement in challenging a historical discourse that fails to take into account the extent to which the (neo)colonial project ensures the maintenance of structural inequalities between Africa and the West (Gathii 2012a, 416–418). According to this school of thought, who Gathii (2012a, 418) referred as the 'critical traditionalists', the historical analysis should not stop at pre-colonial achievements but critically engage the unequal, neo-colonial global system in order to ensure fundamental and radical reforms.

The points raised in the foregoing paragraphs indicate the pertinence of a critical approach to Africa's international legal history, one that places historical discourses at the heart of the theories and practice of international law in Africa. This will require paying more serious attention to a multi- inter- transdisciplinary study of the past, and more importantly the extent to which this impacts present and future issues. Beyond the discipline of history, fields such as anthropology, archaeology, linguistics, and sociology hold valuable information and insights that can further enrich the study of Africa's international legal history. Scholars have shown how artefacts can assist in grasping the nature of diplomatic interactions and trade relations between precolonial African entities and external actors (Ryder 1969, ix; Tymowski 2020, 167–168; Metzig 2016). For example, Tymowski (2020, 168) noted that while there is little or no information in the literature regarding the success of the Benin diplomatic mission to Portugal regarding the supply of arms, Benin sculptures of Portuguese musketeers 'indicate that such arms were present at the courts of the *obas*'. Such information aids in understanding that despite the Portuguese trade embargo on the supply of arms to Benin, the latter was able to secure arms through 'unofficial' means (Ryder 1969, 68). Similarly, Levitt (2015, 121–122) observed that the intersectional study of international law, history and Egyptology is important for understanding how ancient Egypt normatively influenced Greece and Rome, and thus laid the basis for many of the practises under modern international law. The reference to African proverbs, by Elias (1965, 221) and Falola (2017, 703), as a source of societal norms also show the role linguistics and sociology can play in exploring the knowledge base of pre-colonial internationality. Also, past and present archaeological works across the continent are increasingly providing more insights into the existence of advanced diplomatic engagements and law-making in pre-colonial societies. This includes the discovery of ancient city states, artefacts, and important legal documents (Levitt 2015, 126; Zollmann 2018, 907; Goolam 2006; Green 2019, 165–166).

These points inform the motivation behind the exploration of internationality in the Benin Empire, and how such knowledge can help sharpen the pedagogy and practical application of international law on the continent. The key task, as will be shown later, will be to lay the conceptual ground for the critical incorporation of both the 'contributionist' historical excursus and the 'critical traditionalist' appraisal of the international order in the process of rethinking the pedagogics of international law in Africa. It suffices to note that while both schools of thought may approach issues from different perspectives, they are interdependent tools for displacing international law's Eurocentric attachment. As Gathii (2012b, 4) rightly pointed out, 'contributionism is a narrative asking for more. It is a beginning point not an ending point […]'.

Aspects of Benin Empire's internationality

> Our information about the Benin past cannot, in fact, be likened to the pieces of a jigsaw puzzle, predestined to fall neatly together once we have gathered sufficient of them; rather it must be seen as the stray components of a multi-dimensional structure seemingly held together by a few threads, although instinct tells us that it has unity. (Ryder 1969, ix–x)

Statehood

The Benin Empire was an important and strategic pre-colonial African entity. It was a well organised and highly centralised politico-economic institution, a factor that helped position it as an essential trading and missionary ally of European partners (Ryder 1969, 29).[3] Early European explorers noted the sophistication of the political system, and the architectural and spatial orderliness of the Kingdom (Thornton and Girshick 2001, 358–359). They had commented on the architectural magnificence of the royal palace; the majestic Benin Wall; the well laid out, orderly and clean city space; and the polished walls of the houses (Thornton and Girshick 2001, 358–359). For example, the movements of European traders and explorers were tightly monitored, their activities largely circumscribed by official rules, and they were made to pay for services (Thornton and Girshick 2001, 358–359). In an account written by a European mission (1651–1652), it was reported that a chief had told the Europeans about the strict law that forbade anyone in Benin from teaching the language to outsiders. A rule that was strictly followed as the visitors found no one that was willing to break the rule (Ryder 1969, 309).

In addition to diplomatic interactions with Europeans, the Benin Empire also had engagements with other African entities. For example, Bradbury (1957, 22) noted that the armies of the *Oba* of Benin and the *Alafin* of Oyo negotiated a territorial dispute by planting a tree to demarcate their respective spheres of influence. Benin also exchanged ambassadors with the Itshekiri Kingdom of Warri, although relations later became strained due to conflicts (Ryder 1969, 113). In addition, the *Oba* of Benin appointed agents (or consuls) in the peripheral parts of its territory – such as Akure, Owo and Akoko Kingdoms – to administer tributary relationships (Smith 1973, 618; Akintoye 1969, 550–551; Usuanlele 2018, 150; Bradbury 1957, 22). Present day Lagos was under the suzerainty of the Benin Empire until 1850. It served as one of its outlets to the coast (Shasore 2014, 32).

At the helm of the decision-making matrix of internationality in the Benin Empire was the King, the *Oba* of Benin. According to Bradbury (1957, 42), 'the *Oba* was the official source of all legislation and state policy; he alone could take the decision to prosecute a war and all national campaigns were carried out in his name'. As European explorers remarked, 'the King of Benin can in a single day make 20,000 men ready for war, and, if need be, 180,000 […]' (Thornton and Girshick 2001, 360). Such powers, and its application, mainly derived from customary law principles that regarded the position of the King as sacred and mystical (Thornton and Girshick 2001, 360). This is captured in the saying: *Oba yan Agbon* ('the Oba owns the world') (cited in Aisien and Oriakhi 2013, 114). This largely explains the futile attempt of European missionaries to convert Benin Kings to Christianity (Thornton and Girshick 2001, 360).

Benin Empire's military and trade prowess were well established before European influence. As Akintoye (1969, 574) noted, the sixteenth and seventeenth centuries

witnessed the high tide of Benin's expansionism, with *Oba* Ewuare undertaking the invasions of neighbouring entities. Only a few entities were able to successfully resist Benin's military and diplomatic dominance. Such military superiority was due to Benin Empire's tight and disciplined political unit as compared to the fragmented political organisation of some of its neighbouring Kingdoms. Historians have argued that the availability of firearms was not a major factor, as opposed to a well organised political unit, in the military dominance of the Benin Empire (Akintoye 1969, 548; Graham 1965, 319; Ryder 1969, 52). This dominance also resulted in the spread of Benin cultural influence, and the accordance of special respect and immunities to Benin citizens in neighbouring Kingdoms (Akintoye 1969, 551–552; Dike 1956, 21). In terms of trade relations, Benin Empire conducted trade activities with neighbouring Kingdoms through well organised trading associations, which had the *Oba* as patron and a leading palace chief as president (Akintoye 1969, 554). These trading associations had regular meetings about the welfare and protection of their members who are engaged in long distance trade (Akintoye 1969, 554–555). Benin traders often became the face of the Empire's expansionist agenda by serving as consuls, the *Oba's* interpreter, selling products that shaped local cultures within and outside the Empire's axis of influence, and the establishment of trading and resting villages (Akintoye 1969, 546; Aisien and Oriakhi 2013, 112).

Diplomatic and trade relations

As a principal authority in the international relations matrix, the King was able to delegate powers to senior-title holders, interpreters and other officials to take binding decisions on behalf of the Empire (Bradbury 1957, 43; Ryder 1969, 40). The King was also able to manipulate the process of such delegation in order to ensure loyalty and firm control on the activities of such officials (Thornton and Girshick 2001, 360, 362). Furthermore, the information gained from envoys was instrumental in framings a rational and beneficial trade policy with partners (Tymowski 2020, 168). Ryder (1969, 38) mentioned that the King exercised 'royal monopoly' to ensure that only his agents sold pepper and palm oil (which became a substitute for slave trade) to Europeans. Documents of Portuguese, English, Spanish, and Dutch travellers indicated the individuals who at different times exercised diplomatic authority on behalf of the King. For example, in 1505, the Portuguese recorded the presence of three officials responsible for trade negotiations on behalf of the *Oba* of Benin: *Oba's* chief counsellor, a *Veador* (the chief responsible for the direct supervision of trade), and the chief of Ughoton (the main port of the Benin Empire) (Ryder 1969, 41). According to Dutch officials, by the seventeenth century, the *Oba's* central command and control over trade activities had shifted to local officials and traders, albeit operating in his name (Thornton and Girshick 2001, 366; Usuanlele 2018). This was a result of the change in the pattern of production and also the decline in the quantity of the products shipped out of the Ughoton seaport (Thornton and Girshick 2001, 367). An example was the decline in the export of pepper (a royal monopoly) and the rise of cloth trade, which was never a monopoly of the King, as it was mainly in local hands (individuals and trading associations) (Thornton and Girshick 2001, 367).

As commerce was a key element of its internationality, the Benin Empire invested in structures that would aid this quest. This included the development of a seaport, learning European languages (especially Portuguese), and allowing the conversion of some of its

citizens to Christianity. According to a Dutch explorer, as a means of ensuring the smooth flow of trade, the *Oba* legislated death penalty for the offence of inflicting any injury on a foreigner (Ryder 1969, 126–127). There were, however, reported breaches of diplomatic courtesies and treaty agreements. For example, in 1539, three Portuguese missionaries wrote a letter to the King of Portugal about the *Oba* of Benin's penchant for imprisoning ambassadors (Ryder 1969, 73). Similarly, it was reported that France, despite treaty agreements, in the 1540s continued to explore Benin waters and took cargoes of pepper from Benin (Ryder 1969, 74).

The establishment of the Ughoton seaport was a major highlight. The importance of this seaport was further enhanced by the Oba's appointment of the Chief of Ughoton[4] in 1514 as one of the two ambassadors to Portugal (Ryder 1969, 48). Ryder's (1969, 45–46) account of the visit is worth quoting in full:

> The embassy consisted of two persons whom the Portuguese called Dom Jorge and Don Anotnio, which may indicate that they were baptised Christians. To cover their travelling expenses, they took with them twelve slaves to be sold as need arose; the Oba gave another four slaves to the captain of the ship in which they sailed as price of their passage. Not content with that payment, the captain seized six of their own slaves, and when Dom Jorge, the senior envoy, protested, the captain made life miserable for them by withholding their victuals. After further extortions, they reached Lisbon in a wretched condition, which was only partially relieved by a small daily allowance from the King of Portugal. Most of their business was conducted through the secretary Carneiro, whose great personal interest in the Benin trade hastened matters along, so that by November 1514 they were ready to leave … Their mission had, however, met with only moderate success. Missionaries the King readily promised and arranged that they should return to Benin with the envoys … Arms he refused to send until the Oba should have proved the sincerity of his professed inclination to Christianity.

Although their mission to secure arms failed, in recognition of their diplomatic status, the King of Portugal presented them with glamorous parting gifts (Ryder 1969, 47). It is important to emphasise the equality of relations in diplomatic engagements between European and non-European partners during this period. Anghie (2006, 745) noted that such consideration of equality was based on the principle of naturalism, which asserts that states are the exclusive creators of law and are thus only bound by the laws they have consented to. However, the position of equality in interaction between European and non-European actors changed with the rise of positivism in international law, when racial and racist terminologies were devised to categorise states as civilised and uncivilised (Anghie 2006, 745). In the case of Benin, Portugal respected its attributes of statehood, and accorded its ambassadors with the requisite diplomatic respect and immunity (Elbl 1992, 201). Regarding the Kongo-Portuguese relations, Thornton (1981, 186–188) observed that despite Portugal's developed marine and firearms technology, the fact that both were on the same political and economic levels largely influenced the equality of diplomatic engagements between them. Examples of diplomatic protection and privileges given to African ambassadors include the honorific designation of *Dom* (a reference to their high nobility status), provision of material support for the duration of their mission, presentation of gifts (to them and the King) and ensuring their safety during their stay (Elbl 1992, 201; Ryder 1969, 41, 47). The *Oba* of Benin also accorded similar privileges to European ambassadors (Osadolor and Otiode 2008, 404). On certain occasions, the Portuguese had refused to extend expected ambassadorial privileges to African envoys. One such example was the downgrading of the status and

reception given to a representative of the *Oba* of Benin in 1515 due to what the Portuguese considered as the envoy's low-ranking social status (Elbl 1992, 201 [fn 180]).

As a strategic response to Portugal's insistence of Christianity as the basis of its trade relations, the *Oba* allowed his sons and some chiefs to be baptised and also learn to read in Portuguese (Ryder 1969, 50, 118). The Portuguese, however, remained frustrated by the inability to convert the *Oba,* and the continued traditional practises, particularly human sacrifices (Ryder 1969, 70–72). The issue of human sacrifice in Benin was a major concern to European visitors, and by the nineteenth century became the basis through which many Europeans based their analysis of Africans as an inferior and/or sub-human race. Many European chroniclers of Benin history provided grossly exaggerated and sensational accounts of the extent of human sacrifices in the Benin Empire (Graham 1965, 327–330; Osadolor and Otiode 2008, 407–410; Green 2019, 162). This also extends to the way in which colonial historiography paints a distorted picture of pre-colonial African actors as lacking agency during diplomatic interactions (Thornton 1981).

The refusal of successive Benin Kings to be baptised and adopt Portuguese names or change the name of any part of the Empire to a Portuguese name, as the Kongo Kingdom had done, demonstrated the fierce diplomatic independence and assertiveness of the Empire (Ekeh 2016, 23). The refusal to adopt Christianity, coupled with other issues relating to the changes in patterns of trade and rise of other players, eventually led to the decline of the Benin-Portuguese relations (Ryder 1969, 65–72). In an effort to mend the strained Benin-Portuguese relations, in the 1540s, the *Oba* had sent envoys to Lisbon and France, with very little success (Ryder 1969, 73–74).

The volume of trade that was carried out through the Ughoton seaport, and the attendant development of factories around the port by Portuguese traders (and later Dutch traders), brought significant wealth to the Empire and further enhanced its internationality credentials. The growing base of the cowrie shells as trade currency in the sixteenth century allowed the Benin Empire to systemise the collection of tolls and taxes, expand state infrastructure and grow its army (Green 2019, 167–168). The King was centrally involved in choosing the officials (either royal officials or merchants) that negotiated with the Europeans in Ughoton (Thornton and Girshick 2001, 367). Pepper, slaves, ivory, palm-oil, stone beads and cloths were some of the items that were transported through the seaport (Ediagbonya 2015, 210). Benin's carvings, elephant tusks, and ivory wares became an important part of European aristocratic possessions while European imports, such as iron bars, enhanced the Empire's manufacturing base (Ekeh 2016, 10–11; Ryder 1969, 98; Aisien and Oriakhi 2013, 114). There was also the cultural influence of the trade relations. An example of this was the importation of coral beads from Europe, which was appropriated and adopted by the Benin royal institution as one of the hallmarks of its appearance and mystical stature (Ediagbonya 2015, 13). This further influenced the culture of Kingdoms in the West Niger Delta and other entities under suzerainty of the Benin Empire. This, according to Ekeh (2016, 12), was an indication of the sophistication of the Benin royal institutions to recognise and bend new opportunities to its advantage. Benin-Portuguese trade relations was also responsible for the exchange of tropical agricultural crops such as the transfer of yam and plantain seedling from Benin to the Americas and the introduction of cassava, corn and groundnuts to the Benin Empire (Ekeh 2016, 27–28). Some Portuguese words became part of the local vocabulary. This includes words such as *ibolu* (ball) which is the Portuguese *bola, ekoka* (coconut

palm) derived from the Portuguese *coqueiro,* and *amagazemi* (store) from the Portuguese *armazem* (Green 2019, 160). Another advantage of Benin's relations with external parties was that it inspired *Oba* Orhogbua's (1547–1580) fascination with the sea, particularly its strategic role in expanding and consolidating the Kingdom (Aisien and Oriakhi 2013, 114).

Treaty negotiations, disputes and decline

The trade with European partners was not always fair and equal. European entities determined the currency of exchange, which often fluctuated to the detriment of African traders, and the terms under which the trade was to occur (Rodney [1972] 2012, 70, 76–77). An example is the way in which British traders were able to monopolise and manipulate the trade in palm oil through the credit system in the Niger Delta axis. As Dike (1956, 104) observed:

> The credit system … can be traced partly to the fact that the manufactured goods used in the barter trade – particularly the cotton goods – incessantly altered with the changing fashion of West Africa. Since these barter goods served the role of capital, the Delta middlemen … were forced to depend on their white customers. The changeability of the West African market meant that the middlemen could not accumulate trade goods which though in vogue in one season may be outmoded in another.

Ryder (1969, 41) also observed that most of the merchandise from the Portuguese was only useful for personal ornamentation, with little or no utilitarian value for enhancing the strength and survival of Benin. This was possibly the result of the strict observance of the papal prohibition of the sales of guns and irons to non-Christians (Ryder 1969, 41).

The treaty negotiations with European entities exemplified the deftness of the Empire's approach to international relations. The negotiation with the Dutch in the early part of the eighteenth century is instructive in this respect. The Dutch were exploring the possibility of buying redwood and gum from Benin, and the king had asked for the establishment of a factory on his territory in return (Ryder 1969, 138–139). As a result, the Dutch put down their terms and conditions: that the King would not harbour of its runaway slaves; that the King would build and maintain the requested two factories; swift arrest and punishment of anyone who stole from the company; that in the event of default of the credit system, the King or the village headman would stand as sureties; and the increasing of the volume of trade between the Dutch and Benin (in particular, granting the Dutch a monopoly of trade) (Ryder 1969, 139–140). When the treaty was finally signed in 1715, many of the conditions had been substantially modified due to the intense bargaining between both parties (Ryder 1969, 140). One of the key points that the King refused to concede on was the request of granting monopoly of trade to the Dutch (Ryder 1969, 141). The King had noted that since he was the owner of his land, he had the right to extend free access of trade to all other nations (Ryder 1969, 141). Similarly, to the consternation of his Dutch partners, the King was able to negotiate a favourable exchange rate of five pounds of gum against one ivory (Ryder 1969, 143).

In terms of its trade relations with Portugal, Benin was able to exercise some skilful and assertive diplomatic moves. For example, while Portugal had instituted a trade embargo on Benin, the latter was still able to acquire firearms through smuggling operations from São Tomé (Ryder 1969, 68). In addition, the Kingdom was able to diversify its trading options and partnerships despite this trade ban. In this regard, Benin was not only engaged in

private trade with the Portuguese traders based in São Tomé, it also traded extensively with the French and the Dutch during this period (Ryder 1969, 69). In order to engage in trade through the seaport, Europeans were mandated to pay duties, albeit a modest one, to the King (Ryder 1969, 130). The failure to pay these duties, or in a case where the trade agreements had been violated, the King exercised his right to stop trading activities in the Kingdom. This was also known as the 'opening and closing the market' mechanism (Obinyan 1988, 33; Ryder 1969, 45). As Ryder (1969, 45) observed, 'the opening and closing the market' practise was already a part of the local trade before the arrival of the Europeans.

Another important diplomatic move on the part of the Benin royal institution was the restriction of the activities of early European traders to the coast. This action was not only meant to preserve the authority of the Kings over economic activities but also protect indigenous forms of production and customs associated with such trading activities (Obinyan 1988, 34). This enabled Benin monarchs maintain strategic control of the means and processes of shaping internal administrative bureaucracy without the interference of external parties (Ekeh 2016, 36; Ryder 1969, 276–277). In addition, such control over indigenous trading activities served as a means of managing the local economy and sustaining cultural norms, factors that were aimed at strengthening both the internal and external positioning of the royal institution.

The decline and eventual fall of Benin's internationality coincided with Britain's incursive imperial drive. Having secured the title over the coastlands and Niger from the Berlin conference of 1884/85, Britain was keen on bringing Benin under its sphere of influence (Ryder 1969, 261–262). By the late 1880s, British officials had started penetrating the Benin waters and territories and establishing trade posts (Ryder 1969, 265–267). In 1892, the *Oba* eventually signed a protectorate treaty with the British which essentially gave away Benin's independence (Ryder 1969, 272). In addition to the abolition of human sacrifice, the treaty demanded that the King accept consular guidance on all internal and external matters, open trade to all nationalities, and allow Christian missionaries to have unfettered operation in Benin (Ryder 1969, 272) The British were of the opinion that the King had violated some of the terms of treaty, in particular the opening of trade to all nationalities, and sought ways to address this (Ryder 1969, 272). In 1897, the British acting consul had demanded to see the King to raise these issues but was told that the King was not available due to his involvement in an important traditional festival (Ryder 1969, 280, 286). The consul, together with about 200 men, ignored this and decided to march towards Benin. A resistance was put up, and the ensuing fight led to the killing of the consul and most of his men. As Ryder (1969, 288) noted, the King had tried to dissuade the war party from attacking the consul and his men but to no avail. After six weeks, the British retaliated by sending a punitive force of about 1,500 men that conquered the city and looted thousands of Benin's magnificent bronze statues (Ryder 1969, 290–291). The King was eventually arrested and exiled, thereby ending the existence of Benin as an independent and formidable Empire.

Studying the past in present tense: implications for contemporary international legal scholarship in Africa

If, in Shakespeare's words, 'what's past is prologue', then the study of pre-colonial Kingdoms such as the Benin Empire, are imperative sources of devising a conscientious

approach to decolonising the understanding of international law in Africa. The exposition above shows the presence of some form of a systematised approach on the part of the Benin Empire in dealing with external actors. This is not to say that the system was perfect, but it at least showed some level of predictable, and even rational, patterns of engagement. In this respect, several utilitarian points can be distilled from the foregoing discussion on Benin Empire's internationality. One is the sophisticated level of agency displayed by Benin in its diplomatic engagements. In this respect, Benin was able to assert its politico-cultural and economic independence in its dealings with external partners. As shown above, the King refused to convert to Christianity despite the implications of not securing much needed arms from the Portuguese. Similarly, in negotiations with the British, Dutch and Portuguese, various Benin Kings emphasised their suzerainty, especially as it relates to the rejection of overt demands for trade monopoly by external partners, protection of local industries, and the swift exercise of sanctions when treaty obligations and agreements were violated. The second is the adept understanding of diplomacy. The various Kings of Benin understood the linkages between domestic politics and international relations and were able to carefully navigate this terrain. This was evident in the way emissaries were appointed and deployed; cultivation of soft power measures, particularly the use of organised business to spread the politico-cultural and economic objectives of the Kingdom; protectionism; and the systematic streamlining of reports from Benin envoys into developing a coherent diplomatic strategy. These points were not unique to Benin, as other Kingdoms such as Oyo, Kongo, Dahomey, Ashanti and Bornu displayed comparable levels of sophistication in their internationality endeavours. The fact that these exploits, including their numerous missteps, have not found their way into international law textbooks and curriculum in African universities remain a major indictment. It seriously undercut the knowledge of African students about their past, and thus removes their ability to critically engage present issues with the past serving as a contextual guide.

As such, what is required is a proper framework that promotes the study of the past in present tense. This task is not in any way a call for creating hierarchies of knowledge or the complete abandoning of all that currently exists in the curriculum of international law in African universities. Rather, it points to the need for an engagement that begins with a critical dissection of what currently exists as a means of boldly rejecting international law theories that helped advance the erasure of non-European contributions, and in some cases engage in patronising gestures towards Africans. In this respect, discussions on the historical development of international law, sources of international law, territorial sovereignty, immunity, inter-state relations, trade negotiations, and conflict resolution must be re-evaluated and discoursed from a broader non-Eurocentric perspective. As shown in the foregoing, it is important to situate the historical development of international law, and internationality in general, within a narrative that describes state formation in pre-colonial entities, and the extent to which they were able to deploy strategic interests in their dealing with external partners. This should not be a mere exercise of drawing parallels; it must be geared towards a critical engagement of how these impact contemporary practises. Without romanticising the past, several points can be distilled from such exercise. One is to appreciate and where necessary, critique some of those practises. For example, Levitt (2015, 161) shows how ancient Egypt established a colonial system that was later adopted and refined by ancient and medieval Europe. This also applies to Benin's, and

other precolonial entities, management of relations with vassal states. Furthermore, Levitt (2015, 162) highlighted the similarities between the provisions of ancient Egypt's Treaty of Kadesh on mutual assistance on external and internal threats to the African Union's (AU) codification of the right of intervention against threats to legitimate order. Benin Empire's assertive agency regarding negotiating as an equal partner, and diversifying its trading partnerships and portfolio, could also provide some useful lessons for dissecting Africa's trade relations with the European Union (EU), China, United States of America and other external actors. This speaks to centring Africa's agency, especially in the context of deriving meaning benefits from such relations through the pursuit of a rational and beneficial international trade policy. The quest for the repatriation of African artefacts held in museums and libraries in the global north is another issue that must be prioritised in Africa's international legal scholarship. These invaluable works of art are not only crucial sources of understanding pre-colonial Africa's internationality, they also assist in narrating the culpability of Eurocentric international law in legitimising dispossession.

Similarly, in terms of advancing Africa's regional integration drive, it is important to engage many of the issues relating to trade, free movement and conflict resolution in the context of drawing useful lessons from the dynamics of pre-colonial internationality processes. For example, Ochonu (2015) provided a useful, critical analysis of how current efforts on achieving intra-African trade could learn lessons from pre-colonial Africa's largest trading network, the Wangara trade network. Relatedly, Benin's utilisation of business guilds in advancing the interests of the Kingdom, particularly the soft power implications of such practise, is a useful lesson for the implementation of the African Continental Free Trade Area (AfCFTA). Key lessons include the adoption of practises that promote the integration of businesses into host communities through the knowledge of local community, diversification of trade portfolio, investment in reliable supply chain mechanisms, and the embrace of cultural values and identity of host communities (Usuanlele 2018; Ochonu 2015). Also, of crucial importance for intra-African trade is the understanding of how the Benin Empire saw trade as a tool for sustaining peace and prosperity (Usuanlele 2018, 155). In addition, the study of the salient linkages between the normative practises of pre-colonial African Empires and current regional integration initiatives is important. Like Benin, Songhai and Mali Empires strategically absorbed other entities into building mega structures that institutionalised common trade tax regimes (Jackson, Potts, and Bah 2017). Similarly, efforts at implementing continental free movement of persons can draw useful lessons from pre-colonial traditional values of diversity, hospitality, communalism and empathy (Sanni 2020).

The discursive engagement on Africa's international legal history should not only be limited to providing historical examples but should go further to incorporate the polemics of TWAIL scholars, and then push for alternative ways of developing international law. As some scholars have cautioned, the discussion of Africa's past within European international law categories could prove to be a 'methodological trap' that ends up legitimising the existence of the same Eurocentric terminologies (Zollmann 2018, 913). In order to avoid this 'trap', it is essential to understand this as a two-track process. First is the task of deconstructing the existing Eurocentric framing of the theories underpinning international law. The starting point in this respect is using the works of 'contributionists' to refute historical errors and identify the nature and contexts of pre-colonial African diplomacy and international law/relations. This should then be followed by the consideration

of TWAIL scholarship on the assessment of the fundamental problems underlining the existent global structure. In doing this, it is important to place critical international scholarship within what has been described as a 'greater historical nuance and precision concerning Africa's juridical past' (Levitt 2015, 164 [fn 188]). This position allows for a better appraisal of historical (dis)continuities, particularly as it manifests in the racialism of modern international law/relations, debates and obstructions to the reform of global governance architecture, problematic responses of governments in the global North to migrations from the global South, and the continued marginalisation of subaltern voices. Such analysis assists in dissecting the ideational and structural facets of hegemonic attitudes against the appreciation of pluriversality, and alternatives to the neo-liberal conceptions of global solutions.

This combination described above should then dovetail into the second task: one which formulates parameters of providing an African-centred approach to the theory and practice of international law. Engaging in an uncritical examination of Africa's past not only distorts the message but further affirms the colonial discourse that promotes the 'static appearance of [African] beliefs and thought structures' (Kebede 2017, 449). As argued by some African philosophers, only aspects of traditional culture that can stand the rigorous test of critical evaluation, and thus aid progressive development should be preserved (Kebede 2017, 449). In the context of discussing pre-colonial internationality in the present tense, it is pertinent that issues that advance critical examination of practises are brought to the fore. Such critical stance would also assist in ensuring that genuine indigenous practises are not substituted with imperial historiography or glossing over serious mistakes of the past (Falola 2017, 704). It is only through this kind of assessment that durable alternatives of moving Africa from the periphery to the core of international law can be meaningfully achieved. What then are these measures?

The first in this respect is to accept that the road towards advancing alternative framings and references is one that should be firmly rooted in considering a variety of sources outside the legal sphere. Falola's (2017, 703–704) suggestion regarding 'ritual archives' is pertinent in this regard. He noted:

> By ritual archives, I mean the conglomeration of words as well as texts, ideas, symbols, shrines, images, performances, and indeed objects that document as well as speak to those religious experiences and practises that allow us to understand the African world through various bodies of philosophies, literatures, languages, histories and much more … In varied ways, a countless number of sages, priests, devotees, and practitioners created oral and visual libraries, which are linked to ritual complexes and secular palaces … It is through their knowledge that histories and traditions were constituted, identities were formed, and philosophy as we know it emerged.

Ryder's (1969, ix) reference to Benin's oral history and artefacts as an avenue for reconstructing aspects of its internationality is also an important component of 'ritual archives'. This invariably calls for a multidimensional perspective, one which brings together actors from diverse fields of knowledge to interrogate and situate the connections between the past and present. The variety of sources that exist in the fields of history, archaeology, spirituality, anthropology, linguistics and sociology are all building blocks towards reframing Africa's international legal history. The idea is not to answer all the questions at once but rather to develop more introspective questions that should push scholars towards diversifying their methodological engagements. Africa's continued peripheral role in the global

system cannot only be addressed through the sole concentration on 'issues that hold relevance for the present' nor through a one-dimensional glorification of the past.

The second elemental component of this exercise is the applicative dimension. In other words, how does the knowledge of the past feed into practical measures of curriculum transformation and the practise of international law in Africa? On the issue of curriculum transformation, the point is not so much the reflection of pre-colonial internationality in the curriculum as it is the overall ideology of such incorporation. There is the need to avoid what Schwoebel-Patel (2015, 100–101) referred to as 'slip in the theory' approach, one that raises the risk of over simplification of complex ideas, which only zooms in on legalism and thus distance theory from practise and possible reality. Regarding pre-colonial internationality, an example of this would be the mere insertion of instances of such practises in the curriculum without necessarily engaging in a critical, contextual overview of what it means for theory and practical applications. A proper contextual exercise should focus on a renewed engagement with the entire structure of the international law curriculum.

One way of achieving this is through the relational scrutiny of stated theories and assumptions, in a way that places pan-African epistemic and polemical works of critical scholars at the core of efforts aimed at decolonising the curriculum. This speaks to a pedagogical practise that enhances critical consciousness among learners. Critical consciousness, according to Freire ([1973] 1998, 18–19; [1970] 2005, 92-93), promotes an active dialogical framework that awakens both teachers and learners to social and political responsibilities, thus equipping them with an interrogative spirit. Ladson-Billings (1995a, 1995b) builds on Freire's idea of critical pedagogy by advancing the 'theory of culturally relevant pedagogy'. She defined this as a 'pedagogy of opposition not unlike critical pedagogy but specifically committed to collective, not merely individual, empowerment' (Ladson-Billings 1995a, 160). This theory encompasses three components: academic success (a context-driven assessment of academic excellence); cultural competence (that allows learners to maintain their cultural integrity throughout the learning process); and critical consciousness (which ensures that students develop a broader socio-political consciousness that allows them to critique societal inequalities) (Ladson-Billings 1995a, 160–163; 1995b, 475–478). This gives the learners' cultural worldview the opportunity of mediating the pedagogical process. Through this kind of engagement, students and scholars can assess domestic and global issues that reinforce Eurocentric ideologies, and then develop critical alternative to pedagogical and processual methods. It is also a pertinent source for shaping the ideational underpinnings and momentum for advancing ongoing regional integration efforts on freedom of movement, free trade, and conflict resolution in Africa.

Indeed, there are areas of Africa's international legal history that yearn for more critical engagement from scholars both within and outside the legal field. The utilitarian relevance of international law in Africa, both as tools for enhancing Africa's global relevance and addressing nagging problems, largely depends on how scholars and practitioners are prepared to meaningfully respond to this challenge.

Conclusion

The primary task of this article was the consideration of pre-colonial Africa's internationality and its implications for contemporary international legal scholarship. In this regard,

Benin Empire's international law/relations engagements served as an illuminating case study. This article highlighted Benin's display of sovereignty, and how this translated into an assertive foreign policy position on issues ranging from trade negotiations, appointment of envoys, protectionism, and the prudent cultivation of soft power. In understanding the utilitarian impact of this historical study for current and future international law engagements in Africa, the article proposed a critical multi- inter- transdisciplinary approach that interrogates the linkages between the past and present. Such task is only possible in an environment where a pan-African cultural worldview is no longer treated as an afterthought, but as an essential tool for ensuring that Africa's international legal scholarship is imbued with critical consciousness.

Notes

1. As Ginther (1982, 59) rightly noted:

   > The dominant position of the First World states is not merely a matter of their control of international legal institutions … but more fundamentally it follows from the fact that they created the modes of thought and figures of speech by which these institutions are understood and discussed and by which international law as a whole is operated and developed.

2. In this respect, the tendency will be to find direct comparative element or parallels between Eurocentric international law terminologies and practises in pre-colonial Africa. This has been referred to as a 'conceptual state of emergency', which is an attempt to reinforce familiarity and legitimacy of use of legal concepts (Zollmann 2018, 907).
3. Graham (1965, 320) noted that it is important to make a distinction between the 'state of Benin' and 'Benin proper':

   > For the state, in fact, consisted of many 'independent communities' which 'were seldom at peace,' which enjoyed 'very full powers of local government,' and which 'were left pretty much alone to work out their own destinies.' The peoples of the territory between Bonny and Lagos constituted a 'state,' only insofar as their tribute and services were rendered to the *Oba* of Benin … Benin proper should be regarded as an inland area, including the territory which is presently demarcated by the Benin Divisional Boundary.

4. Ediagbonya (2015, 209) noted that a number of reasons could be adduced for the choice of the Chief of Ughoton as an ambassador to Portugal. One was that he was also the chief priest of *Olokun* temple, which essentially meant that he was also regarded as a palace prince. The second was that he was the priest of an important deity that was worshipped by the King. The third was that his headship of a seaport that generated the wealth of the Empire made him a major player that could not be ignored.

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